SUPREME COURT OF THE UNITED STATES

NO:

OCTOBER TERM, 1963

JACK PINKSTON, GARNISHEE,

Petitioner,

v.

NICHOLAS M. CARTER, ET UX

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

January 13, 1964

Byron R. White
Associate Justice of the Supreme Court of the United States

Dated this 30th
day of December, 1963

Nicholas M. CARTER, Ruth A. Carter,

Appellees,

v.

Jack PINKSTON, Garnishee,

Appellant,

No. 9075

UNITED STATES COURT OF APPEALS

FOURTH CIRCUIT

Argued September 25, 1963

Decided September 30, 1963

Appeal from the United States District Court for the District of Maryland at Baltimore; Harrison L. Winter, District Judge.

Jack Pinkston, pro se.

James P. Donovan and Roy C. Frank, Washington, D.C., on brief for Appellees.

Before HAYNSWORTH, BOREMAN, and J. SPENCER BELL, Circuit Judges.

PER CURIAM.

This is an appeal from an order of the district court overruling the appellant's motion to quash certain attachments issued by the district court.

The appellant here seeks to raise again issues which are clearly res judicata. Appellant had his day in court. See Pinkston v. Carter, D. C. Mun. App., 150 A.2d 629. The order of the district court in this case is

Affirmed.

(R. 45) ORDER OF COURT

(Filed May 3, 1963)

The matter of the motion of Jack Pinkston, Garnishee, to Quash Attachments and Answer of Plaintiffs thereto having come on for hearing, and counsel for the respective parties having been heard, it is

ORDERED by the United States District Court for the Dis-

trict of Maryland, this 3rd day of May, 1963, that said motion be and the same is hereby "Denied".

HARRISON L. WINTER,
United States District Judge.

ORDER APPOINTING TRUSTEE

(Supported by triple Certificate of Clerk and Judge of the Circuit Court for Prince George's County, Maryland)

In the Circuit Court for Prince George's County, Md.
Sitting as a Court of Equity

NO. B 1575

In the Matter of

Holiday Homes, Inc. and

Holiday Homes Mfg. Co., Inc.

(In Trusteeship for the Benefit of all their Creditors)

On this, the 1st day of May A.D., 1957, came on regularly for consideration the petition of Jack Pinkston, Trustee for the Benefit of the Creditors of Holiday Homes, Inc. and Holiday Homes Manufacturing Company, Inc., for leave to liquidate the assets of said corporations; and it appearing to the Court that the same should be granted; accordingly, it is,

ADJUDGED, ORDERED AND DECREED that the said petition be, and the same hereby is granted; JACK PINKSTON is hereby named and appointed Trustee to liquidate the assets of said corporations under the direction of this Court; said Trustee hereby is ordered to post good and sufficient bond with the Clerk of the Court, payable as by law provided in the principal sum of TWENTY FIVE

HUNDRED DOLLARS, as security for the faithful performance of the trust herein reposed; said Trustee is hereby instructed and ordered to marshall, inventory and report to this Court all assets, both tangible and intangible, of the said corporations, and to hold the said assets subject to the further orders of this Court.

/s/ JOHN R. FLETCHER,
Judge.

Garnishee's Exhibit No. 1—pg. 54

MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

MEMORANDUM

This cause having come on to be heard by the Court on plaintiff's traverse to the answers filed herein by Jack Pinkston, garnishee, to the writ of garnishment heretofore served on him on August 8, 1957, and the Court having considered the evidence adduced by the parties relevant to the issues raised thereby, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That on March 25, 1955, defendant, Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc., executed, in the District of Columbia, a deed of assignment for the benefit of creditors to garnishee, Jack Pinkston, as trustee; and certain of the property and assets of the assignors were thereafter transferred to the State of Maryland by the garnishee.

2. That defendant is incorporated under the laws of the State of Delaware. On the date of the deed of assignment the place of business of said defendant was in the District of Columbia. The garnishee was, and is, a resident of the State of Maryland.

3. Said deed of assignment was filed on April 4, 1955 in the Clerk's Office, Circuit Court for Prince George's County, State of Maryland, but no certified copy of a statement of assets, nor a list of creditors, was exhibited to this Court in this case; said deed of assignment contains no provision for giving notice to creditors; it reserves the surplus for the benefit of the assignors, and authorizes the trustee to operate the business so far as he deems practicable.

4. Garnishee admits not having filed a bond for the faithful performance of his trust in the Circuit Court for Prince George's County, State of Maryland. There is no showing by the garnishee that he filed such bond as trustee in the District Court of the United States for the District of Columbia pursuant to District of Columbia Code, 1951 ed., Sec. 28-2603.

5. That in the Operating Statement of Trusteeship filed by the garnishee herein on April 30, 1958 he claimed credit for disbursement to himself from the money belonging to Holiday Homes, Inc., in his possession or charge for trustee's commissions, in the sum of $1,821.38.

6. That at the time of the filing of said garnishee's answer to the said writ of attachment, garnishee had in his possession or charge money or credits belonging to defendant, Holiday Homes, Inc., sufficient to satisfy the plaintiff's judgment.

Conclusions of Law

1. The deed of assignment for benefit of creditors of Holiday Homes, Inc., and Holiday Homes Manufacturing Co., Inc., is a District of Columbia contract. To be valid it was required to be filed among the land records of the District of Columbia (Code, 1951 ed., Sec. 28-2602).

2. The said deed of assignment is invalid for the reasons that it was not so recorded within five days from the date of execution, as required by the Code (1951 ed., Sec. 28-2602); nor was the trustee a resident of the District of Columbia, as required by said section; the instrument reserves the surplus for the benefit of assignors; no creditors are named therein; no provision is made for giving notice to creditors; and the provision which authorizes the trustee to "operate the said business so far as to said Trustee seems practicable" is a means by which creditors may be hindered and delayed in the collection of their claims. *Kansas City Packing Co. v. Hoover*, 1 App. D. C. 268 (1893).

3. The garnishee may not lawfully claim credit for disbursement to himself from the money belonging to defendant in his possession or charge for trustee's commissions, amounting to $1,821.38, as shown by the statement which he filed in this cause.

4. Plaintiff is entitled to a judgment of condemnation against Jack Pinkston, garnishee, in the amount of $1,345.29.

Accordingly, there will be entered a judgment of condemnation in favor of plaintiff against Jack Pinkston, garnishee, in the sum of $1,345.29.

Appropriate entry will be made as of September 29, 1958.

/s/ LEONARD P. WALSH,
Chief Judge.

Garnishee's Exhibit No. 1—pgs. 20, 21 and 22

Jack PINKSTON, *Appellant*,

v.

Nicholas M. CARTER, *Appellee*.

No. 2349

MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Submitted March 9, 1959

Decided May 1, 1959

As Modified on Denial of Rehearing June 3, 1959

Jack Pinkston, Silver Spring, Md., appellant, pro se.

James P. Donovan, Washington, D. C. for Appellee.

Before Rover, Chief Judge, Hood Associate Judge, and Cayton (Chief Judge, retired) sitting by designation under Code, § 11-776 (b).

Cayton, *Acting Judge*.

On a traverse to the answer of a garnishee there was a trial, and plaintiff was awarded judgment. Garnishee brings this appeal.

Plaintiff had sued and obtained judgment for $1,286.50 against Holiday Homes, Inc., for breach of a building contract. On that judgment he issued an attachment against Jack Pinkston, the attorney who had appeared for defendant. Mr. Pinkston moved to quash the attachment and also answered the interrogatories exhibited to him by denying that he had in his possession any money, property or credits of the judgment defendant. After certain motions and other proceedings (to which we shall refer later), trial was had on the issues presented by garnishee's answer and plaintiff's traverse thereto, as provided by Code 1951, 16-317. The trial court made written findings of fact

and conlusions of law, decided for plaintiff, and ordered garnishee to pay the amount of the judgment.

We give our first attention to a jurisdictional question raised by garnishee-appellant. At trial he contended that he was not accountable to plaintiff because in acquiring assets and funds of the judgment defendant he had acted as trustee for the benefit of creditors. Appellant says that because the trusteeship involved transactions totalling some $35,000, which is in excess of the trial court's jurisdiction, it had no right to "adjudicate title" to the total fund. He also says that under Code 1951, § 28-2602 such a trust is to be executed under the supervision and control of the United States District Court. These arguments have no validity here. The trial court did not administer or supervise a trust; nor did it make any attempt to decide what should be done with the corpus of the general trust fund. In a dispute between plaintiff and garnishee, involving much less than its $3,000 jurisdiction, the court decided that there were funds in the hands of garnishee which should be subjected to payment of plaintiff's judgment. This the trial court clearly had a right to do.

Appellant charges there was error in denying his motion to quash the attachment. The motion asserted that service of the attachment was void because made while garnishee, a nonresident, was attending court in a representative capacity in another cause. (The garnishee is a Maryland lawyer with offices in nearby Silver Spring.) At trial this contention was renewed by his attorney, but no testimony was taken on the motion to quash, and the record indicates no offer of proof in support thereof. We refer to what seems to be the general rule: that a nonresident attorney who voluntarily enters a jurisdiction to conduct legal business is not immune from service of civil process. See Pitman v. Cunningham, 100 N. H. 49, 118 A.2d 884, and cases there cited.

Next we consider appellant's contention that he was entitled to be discharged as garnishee because plaintiff's traverse was filed out of time. A rule of the trial court provides:

> "After the filing of the answer of a garnishee, he may give notice thereof to the party of whose instance the garnishment was issued, and if such party shall not join issue thereon within 5 days after such notice, the garnishee shall be entitled as of course to judgment in accordance with his answer, unless the time shall be extended by the court." Mun. Ct. Civ. R. 69 (e).

It is true that plaintiff's traverse was not filed within the five-day period mentioned in the quoted rule. But it is also true that along with his answer garnishee had interposed a motion to quash, charging invalid service of process. This challenged the jurisdiction of the court over garnishee's person and had the effect of staying further action on the merits by either party until the jurisdictional question was settled. If the motion were granted there would be nothing for plaintiff to traverse. Not until the motion was denied was it determined that garnishee was properly before the court. Plaintiff filed his traverse six days later. This satisfied the five-day rule because there was an intervening Sunday. Mun. Ct. Civ. R. 6 (a).

Turning to assignments of error which challenge the correctness of the decision below, it needs to be said that in appellant's brief there is a formidable array of factual statements which are not to be found in the record. It also needs to be said, as has been done time and again, that appellate review must be limited to matters in the official transcript of record and cannot be based on statements of counsel which speak against the record either by way of contradiction or by unauthorized additions thereto.

Following the disappearance of the president of Holiday Homes, Inc., in March 1955, any instrument was pre-

pared entitled "Deed of Trust—Benefit of Creditors," conveying the assets of the company in trust to Jack Pinkston. The deed of trust was executed by a lawyer purporting to act as corporate secretary. Appended thereto was the consent of another attorney acting for a stockholder. The trial judge found, among other things, that the deed of trust had been executed in the District of Columbia and that the company's place of business was then in the District; that Mr. Pinkston was and is a resident of Maryland; that the deed contained no provision for giving notice to creditors, but reserved any surplus for the benefit of assignors (stockholders); that though it was filed in a Maryland Circuit Court, Mr. Pinkston admitted that he had not filed with that court bond for the faithful performance of his trust;[1] that he had not filed such a bond in the United States District Court for the District of Columbia as required by Code 1951, § 28-2603; that Mr. Pinkston claimed credit for disbursement to himself of $1,821.38 as trustee's commissions. These findings were all supported by the evidence and it was stipulated in writing that Mr. Pinkston had received "in excess of $1,500.00 on account of and by reason of contracts whereby Holiday Homes, Inc. agreed to construct and erect houses for various purchasers of such houses."

The trial judge ruled that the "deed of assignment" was a District of Columbia contract, and was required to be filed among the land records in this jurisdiction. He continued:

> "The said deed of assignment is invalid for the reasons that it was not so recorded within five days from the date of execution, as required by the Code (1951 ed., Sec. 28-2602); nor was the trustee a resident of the District of Columbia, as required by said section; the instrument reserves

1. It seems that he did file a bond there some two years later in connection with liquidation proceedings.

> the surplus for the benefit of assignors; no creditors are named therein; no provision is made for giving notice to creditors; and the provision which authorizes the trustee to 'operate the said business so far as to said Trustees seems practicable' is a means by which creditors may be hindered and delayed in the collection of their claims. Kansas City Packing Co. v. Hoover, 1 App. D. C. 268".

These rulings were supported by ample evidence and based on sound legal principles. Indeed, the trial judge might very properly have ruled the deed of trust invalid for an additional reason. The lawyer who executed it as secretary of the company freely testified that he was not then in fact secretary and had not held that office (or any other) for some eight months. He said that, after the president disappeared there was pressure from Internal Revenue Bureau and from creditors, and "he had a feeling he should do something to protect the interest of the stockholders and creditors." We may agree that his motives and Mr. Pinkston's, too, were the most honorable. But we cannot agree that by the "deed of trust" we have described there was created a lien or right superior to that of the attaching judgment creditor. The court below was right in subjecting funds admittedly in garnishee's hands to the satisfaction of the judgment. In the circumstances of this case the claim of the garnishee (trustee) to commission must yield to the claim of plaintiff.

See, in general support of the views we have expressed, Keane v. Chamberlain, 14 App. D. C. 84; Haverhill Shoe Novelty Co. v. Leader Shoe Co., 87 N. H. 366, 180 A. 242; Pritchett v. Tolbert, 210 N. C. 644, 188 S. E. 71; Saligman v. Ginsburg, Sup., 102 N. Y. S. 2d 142; 3 Am. Jur., Assignments for Benefit of Creditors, Sec. 114.

It is proper to mention another matter. Garnishee filed a motion for new trial which was overruled. Later

he filed a motion for reconsideration supported by lengthy affidavits. This motion was also overruled. These rulings have not been assigned as error and are not before us for review. But we think it fair to mention that to the extent that the motions and affidavits assert that garnishee was given no opportunity to present his evidence at the trial, they do not agree with the approved statement of evidence. That statement reveals that Mr. Pinkston was called as a witness for plaintiff and testified on direct examination and also at considerable length on cross-examination by his own counsel; also that plaintiff called the corporate secretary who testified fully on direct and on cross-examination as well; also that the court instructed garnishee to file a financial statement and that garnishee asked and was given leave to file certain "late exhibits." Two months later the case was again argued and then decided; and at no time during trial or argument was there any request by garnishee or his counsel for an opportunity to offer additional testimony.

Affirmed.

EXHIBIT "A"

DEED OF TRUST—BENEFIT OF CREDITORS

Apr 4 11:24 A.M., 1955
Recorded
W. Waverly Webb
Clerk Circuit Court
Book 1842, Pg. 155

This Deed, Made this Twenty-Fifth day of March in the year nineteen hundred and Fifty-Five by Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc.

Whereas, the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. are indebted unto sundry persons in various sums of money, which they are unable to pay in full and desire to convey all their prop

erty and estate to Jack Pinkston, Trustee in trust for the benefit of their creditors as hereinafter set forth.

See Schedule A attached hereto

Now, Therefore, this Deed Witnesseth That, in consideration of the premises and the sum of five dollars, the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. do hereby grant, convey and assign unto the said Jack Pinkston, Trustee his heirs, personal representatives and assigns, all their trucks, plant, tools, furniture, fixtures, equipment, business, assets, accounts, claims, demands, estate and property of every nature, kind or description, real and personal, in possession, reversion, remainder or expentancy, and wheresoever situated.

Book 1842, Page 156

To Have And To Hold the same unto the said Jack Pinkston, Trustee his personal representatives and assigns, in trust and confidence, nevertheless, for the following purposes, to wit:

First. To take possession of the said estate and property, and without unnecessary delay, to operate the said business so far as to said Trustee seems practicable and otherwise to convert the same into money by the sale of so much as is salable, and collection of so much thereof, as is collectable, and to apply the proceeds, after the payment of the lawful expenses of this trust including a commission of 10 per cent. of the gross proceeds (exclusive of loans or advances) received, for his services according to law in such cases, and after the payment of the wages or salaries due to the clerks, employees or servants of said grantor contracted within three months anterior to the execution of this deed, to the payment in full of the debts due and owing by the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. without preference or priority, except as by law provided, if the net

proceeds shall be sufficient therefor, and if insufficient, then to the payment of the aforesaid debts pro rata, without preference or priority except as aforesaid, as the same would be decreed to be paid by a Court of Equity.

SECONDLY. After the payment in full of all the debts aforesaid, and all claims and demands whatsoever against the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. for which they may be liable, in trust to pay the surplus, if any there be, to the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. their proper representatives and assigns.

AND the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. for the purposes aforesaid, do hereby make, constitute and appoint the said Jack Pinkston, Trustee their true and lawful attorney, irrevocable, in his name or otherwise, to ask, demand, sue for, recover and receive of and from all and every person or persons all the property, goods, chattels, wares, merchandise, debts or sums of money due, owing or belonging to the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. and hereby granted and conveyed.

Book 1842, Page 157

and for all receipts and deliveries to make, execute and acknowledge due acquitances, and to compound for any doubtful debts; and further to do all other lawful acts required to be done in the premises in the due and lawful execution of this trust.

(Be it remembered that on this, the 25th day of March A.D., 1955, the conditions existing with reference to officers and stockholders of the within named companies are substantially as follows, to-wit: That Samuel M. Selden, President and Treasurer, and Stockholder of said companies, was last heard from and presumably disappeared on March 3, 1955, and has not again been heard from to

this date; that the office of said companies was closed on or about March 7, 1955, and has not been reopened for business to this date; that the office of Vice President, as well as the stock formely held by Wm. Greenough 2d purportedly were transferred sometime ago to Mrs. Wilda P. Mackenzie, but Mrs. Mackenzie has declared such transaction void, and now neither party to said transaction will accept responsibility of the said office or acknowledge ownership of said stock; but both said parties have been notified of this agreement and have expressed in writing their approval hereof insofar as they each feel themselves affected; this leaves only Carl L. Shipley, Secretary of said companies, and Darwin Charles Brown, Attorney for Mrs. Marie W. Ridder, who are affected hereby; and their approval is affixed hereto.)

As Witness the hand and seal of the said Holiday Homes, Inc. and Holiday Homes Manufacturing Co., Inc. the day and year first above written.

Holiday Homes Manufacturing Co., Inc.
Holiday Homes, Inc.

(Seal)

by /s/ Carl L. Shipley (Seal)
Carl L. Shipley,
Secretary.

(Seal)

The consent of Mrs. Marie W. Ridder, as a stockholder, to this Deed of Trust is hereby given by her duly authorized attorney.

/s/ Darwin Charles Brown,
Darwin Charles Brown,
Attorney for Mrs. Marie W. Ridder.

District of Columbia, to wit:
State ~~of Maryland~~, , to wit:

I hereby Certify, That on this 1st day of April in the year one thousand nine hundred and fifty-five before me, the subscriber, Eleanor K. Cheek, a notary public ~~of the State of Maryland~~, in and for the District of Columbia aforesaid, personally appeared Carl L. Shipley, Secretary, Holiday Homes, Inc., Holiday Homes Mfg. Co., Inc. acknowledged the foregoing Deed to be their act.

/s/ Eleanor K. Cheek

My Commission Expires October 1, 1957.

(Seal)

Garnishee's Exhibit No. 1, Pgs. 40 to 42.

MOTION TO QUASH, AND ANSWER TO WRIT OF ATTACHMENT OR GARNISHMENT ISSUED AND SERVED ON AUGUST 8, 1956

(Filed August 18, 1956)

To the Honorable, the Judge of said Court:

Garnishee, appearing specially herein for the purpose of this motion and answer only, says:

1. That the said writ of attachment or garnishment issued and served upon this garnishee on August 8, 1956, should be quashed on the ground that the service of process was irregular and void because if was served on the garnishee, who is a non-resident of the District of Columbia and does not maintain or conduct any business within the District of Columbia, while he was in attendance upon this Court in a representative capacity in another cause and had entered the District of Columbia solely for the purpose of so appearing in said cause, which then was set for hearing in this Court.

2. Answering further herein, garnishee says, (a) That this garnishee was not indebted to defendant Holiday Homes, Inc., either at the time of service of the writ of attachment or garnishment herein on August 8, 1956, or at the time of the making and filing of this answer, and neither was garnishee indebted to the said defendant at any time between said times or dates; (b) That this garnishee did not have in his possession or charge any goods, chattels, or credits of the defendant, Holiday Homes, Inc., either at the time of the service of the writ of attachment or garnishment herein on August 8, 1956, or at the time of the making and filing of this answer, and neither did this garnishee have in his possession or charge any of the goods, chattels, or credits of the said defendant at any time between the said times or dates; and, (c) That the said Holiday Homes, Inc., is not at the time of making and filing this answer, was not at the time of the service of the writ of attachment or garnishment herein on August 8, 1956, and never has been employed by this garnishee.

Wherefore, garnishee prays: That the said writ of attachment or garnishment, issued and served herein upon this garnishee on August 8, 1956, be in all things quashed; and that plaintiff be denied any recovery whatsoever by reason thereof.

Respectfully submitted,

Jack Piskston,
Garnishee

Supported by Affidavit and Certificate of Service on Attorney for Plaintiff.
Garnishee's Exhibit No. 1, pgs. 10 and 11.

TRAVERSE OF ANSWER OF JACK PINKSTON, GARNISHEE

(Filed September 20, 1956, 3:54 P. M.)

Plaintiff traverses the Answer of the Garnishee, Jack Pinkston, to the writ of attachment or garnishment issued and served herein on August 8, 1956, and avers that representing himself as trustee for the benefit of creditors of defendant, Holiday Homes, Inc., he has collected from debtors of Holiday Homes, Inc. an amount in excess of the sum herein attached, which is subject to attachment for the following reasons.

1. Said garnishee, Jack Pinkston, is not the trustee for benefit of creditors of defendant, Holiday Homes, Inc.

2. The purported assignment for benefit of creditors was not filed with the Clerk of the Court having jurisdiction of the matter.

3. The Circuit Court for Prince Georges County, Maryland, has no jurisdiction over the funds, property or other assets of Holiday Homes, Inc.

4. Said garnishee, Jack Pinkston, has failed to post bond with the Clerk of the Circuit Court for Prince Georges County, Maryland, as required by Article 16, Section 275 of the Code of Laws of the State of Maryland, 1951 Edition.

5. Said garnishee, Jack Pinkston, has failed to qualify in the District of Columbia as trustee for the benefit of creditors in the District of Columbia.

6. Said garnishee, Jack Pinkston, has continued to carry on the business affairs of Holiday Homes, Inc., in an endeavor to operate its business for the benefit of stockholders of Holiday Homes, Inc., which vitiates the purported assignments.

Guy M. Bayes

Garnishee's Exhibit No. 1, pgs. 13 and 14.

EXCERPTS FROM ITEMIZED STATEMENT OF ACCOUNT OF TRUSTEESHIP FILED PURSUANT TO MUNICIPAL COURTS ORDER (App. 42) COVERING PERIOD FROM MARCH 25, 1955 TO MAY 1, 1957

Gross Receipts	$32,737.29
Total Expenditures	$34,246.06

Garnishee's Exhibit No. 1—pgs. 16, 17

Statement of Account
THE BANK OF SILVER SPRING
SILVER SPRING, MD.

Jack Pinkston, Trustee Account
8403 Georgia Ave.
Silver Spring, Maryland

Checks	Deposits	Date	No. of Checks	Balance	
	Balance Forwarded	JUL 30-56		46.33	F
10.00		JUL 31-56	1	36.33	1
20.55		AUG 2-56	2	15.78	2
1.30sc		AUG 16-56	2	14.48	3
12.50		AUG 23-56	3	1.98	4

Garnishee's Exhibit No. 1—pg. 47

EXCERPTS FROM MARYLAND CODE

The Constitution of Maryland, Article 4, Section 20, reads as follows:

> "Sec. 20. A Court shall be held in each County of the State, to be styled the Circuit Court for the County in which it may be held. The said Circuit Courts shall have and exercise, in the respective Counties, all the power, authority and jurisdiction, original and appellate, which the present Circuit Courts of this State now have and exercise, or which may hereafter be prescribed by Law."

Maryland Code, 1951 Ed., Article 26, Section 40, reads as follows:

> "40. The circuit courts for the several counties are the highest common law courts of record and original jurisdiction within this State, and each has full common law powers and jurisdiction in all civil and criminal cases within its county (except where by law the jurisdiction has been taken away or conferred upon another tribunal); and all the additional powers and jurisdiction given by the constitution and by law."

SECTION 272, ARTICLE 16, MARYLAND CODE (1951):

"In all cases where a trustee has been appointed by will or deed to execute any trust, and any person interested in such trust shall make it appear to the court that it is necessary for the safety of those interested in the execution of the trust, that the trustee should give bond and security for the due execution of the trust, the court may order that such bond be given, on or before such day as the court shall name; and if the bond, with such security as the court shall approve, be not given by such trustee, then the court may remove such trustee and appoint one in his stead, who shall give such bond and security as the court may require."

SECTION 273, ARTICLE 16, MARYLAND CODE (1951):

"In all cases where any trustee has been appointed by will or deed to execute any trust, then the testator or grantor, as the case may be, in any such instrument may, if he so desires, provide that before any such trustee shall enter upon the performance of duty, that such trustee shall file with the Clerk of the Circuit Court in any of the Counties of this State * * * where such will was probated or such deed recorded * * * a bond to the State of Maryland for the due execution of such trust, with surety, in

such penal amount as may be specified by such testator or grantor; such bond to be approved by the Judge or the Clerk of such Court and recorded."

Section 276, Article 16, Maryland Code (1951):

"When any estate, real, personal or mixed shall be limited or conveyed to any trustee as security for debt, or to be sold upon a contingency, it shall not be necessary for such trustee to file a bond until after the contingency happens, or a sale is about to be made in pursuance of the power contained in the deed or instrument creating the trust, and every such trustee before making sale shall file with the clerk of the court in which the deed or instrument creating the trust is recorded a bond in such penalty as the clerk may prescribe. * * *"

Section 36, Article 47, (Insolvents), Maryland Code (1951):

"The provisions of this Article shall not be construed to apply to or in any manner affect or impair any Bona Fide deed or conveyance by whomsoever made which may be executed and recorded after the 6th day of April, 1894, and which by its terms conveys all the property and estate of the grantor or grantors therein to a trustee or trustees therein named in trust for the equal benefit of all the creditors of said grantor or grantors without preference or priority save as sanctioned by this Article. * * * the trustee or trustees named in such deed or conveyance may lawfully * * * proceed to fully administer the trusts created by such deed or conveyance and distribute the property and estate passing thereunder, or the proceeds thereof, to the persons entitled thereto under the supervision of the equity court having jurisdiction over the same."

DISTRICT OF COLUMBIA CODE, 1951 ED.

District of Columbia Code, 1951, Ed., Title 11, Sec. 11-101 reads as follows:

"The judicial power in the District shall be vested in—

'First. Inferior courts, namely, Municipal Court, Juvenile Court of the District of Columbia, and the Police Court; and,

Second. Superior courts, namely the District Court of the United States for the District of Columbia, the United States Court of Appeals for the District of Columbia, and the Supreme Court of the United States."

District of Columbia Code, 1951 Ed., Title 11, Sec. 11-771, reads as follows:

"There is hereby established and created an intermediate appellate court for the District of Columbia to be known as "The Municipal Court of Appeals for the District of Columbia," for the hearing of appeals from judgments and orders of the Municipal Court for the District of Columbia as established by Subchapter I, and of the Juvenile Court of the District of Columbia, as hereinafter provided."

TITLE 28, CHAPTER 26—ASSIGNMENTS FOR BENEFIT OF CREDITORS, SEC. 28 2602:

"The assignee in every such assignment shall be a resident of the District of Columbia, his assent shall appear in writing in, or at the end of, or indorsed on, the assignment, and the assignment shall be invalid unless duly acknowledged and recorded within five days after its execution in the land records of the said District. The trust created by such assignment shall be executed under the supervision and control of the United States District Court for the District of Columbia."

Municipal Court for District of Columbia, Civil Rule 69 (e) provides:

"After the filing of the answer of a garnishee, he may give notice thereof to the party at whose instance the garnishment was issued, and if such party shall not join issue thereon within 5 days after such notice, the garnishee shall be entitled as of course to judgment in accordance with his answer, unless the time shall be extended by the court."